

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
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| 2012 Biennial Review of Telecommunications Regulations |) | WT Docket No. 13-32 |
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| Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies |) | WT Docket No. 13-238 |
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| Acceleration of Broadband Deployment: Expanding the reach and reducing the cost of Broadband Deployment by improving Policies regarding Government rights of way and Wireless Facilities Siting |) | WC Docket No. 11-59 |
| |) | |

**COMMENTS OF KENNETH R. COPPAGE, THE RADIO SYSTEMS DIRECTOR, MARYLAND
DEPARTMENT OF INFORMATION TECHNOLOGY**

Kenneth Coppage, of the Maryland Department of Information Technology, appreciates the opportunity to provide comments in this rulemaking proceeding. Mr. Coppage is writing on behalf of the State of Maryland, in response to the Commission's *Notice of Proposed Rule Making, Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, FCC 13-238, released September 26, 2013 ("*NPRM*").¹ Please note all comments herein are submitted on behalf of the State of Maryland, and may not represent the view of counties, municipalities, or localities therein. Comments are organized below by the relevant *NPRM* paragraph number as published in the Federal Register.

¶54 *Although the Wireless Telecommunications Bureau's release of the Section 6409(a) PN, ... provided guidance on certain questions of interpretation under this provision, the bureau left other issues unaddressed, and parties have also raised questions and concerns regarding the*

¹ 78 Fed. Reg., 73144, December 5, 2013.

Section 6409(a) PN guidance itself. While these issues could be addressed in practice through local interpretations, judicial decisions, and voluntary agreements, the Commission believes on balance it serves the public interest for us proactively to seek comment at this time on implementing rules to define terms that the statute leaves undefined, and to fill in other interstices that may serve to delay the intended benefits of section 6409(a). The Commission invites comment on its decision to do so and on any reasons why the Commission should limit or decline to take regulatory action in this proceeding.

Comment to ¶54: For the reasons articulated by the Commission in paragraph 55, Maryland, and the Nation as a whole, will benefit from the FCC's rulemaking process and the implementation of rules to define undefined terms, and to fill in other gaps that may serve to delay the intended benefits of section 6409(a).

¶56 "In particular, the Commission believe that best practices or model ordinances that reflect a consensus of industry and municipal interests may facilitate the practical and efficient implementation of section 6409(a), and the Commission is aware of ongoing discussions between industry and municipal government representatives in that regard. Therefore, the Commission invites comment on whether it should refrain from addressing any or all of the issues discussed below at the present time..."

Comment to ¶56: Maryland is unaware of any best practice, or model ordinance efforts currently underway between industry and Maryland municipalities, and so is unable to comment with certainty on potential benefits of those efforts. That said, uniformity and efficiency in 6409(a) implementation would be beneficial to everybody, including Maryland. For that reason, Maryland sees no reason why the Commission should refrain from addressing any of the issues on which it seeks comment.

¶87 The IAC argues that the mandate that States and localities may not deny and shall approve requests applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners. The IAC asserts, as example, that where a county government, as landlord rather than as land use regulator, has by contract or lease chosen, in its discretion, to authorize the installation of an antenna on a county courthouse rooftop of certain exact dimensions and specifications, section

6409 does not require the county, acting in its capacity as landlord rather than its capacity as regulator of private land use, to allow the tenant to exceed to any extent those mutually and contractually agreed-upon exact dimensions and specifications. The Commission proposes to adopt this interpretation of section 6409(a) and seeks comment, including comment on how to ensure it is clear in which capacity governmental action is requested and in which capacity a governmental entity is acting, and whether the Commission needs to address how section 6409(a) applies to requests seeking a government's approval in both capacities. For example, would section 6409(a) impose no limits on such a landlord's ability to refuse or delay action on a collocation request?

Comment to ¶187: Maryland supports the IAC's recommendation, and believes that there is a significant distinction between state and local governments' interest as a regulator and their interest as owners of towers and base stations. Almost all public safety communication tower and base station assets owned by the State and local governments in Maryland are used for public safety purposes. As such, Maryland, in its capacity as asset owner, must carefully manage those assets to ensure public safety. The duty Maryland owes public safety as a tower and base station owner is very different from the one it owes its citizens as a regulator, and the IAC recommendation wisely acknowledges that distinction.

As an owner, the State has made significant public investment in building these assets, and therefore has a vested interest in how those assets should be leveraged, disposed, and managed. As an owner of critical public safety communications equipment, the State exercises, and relies upon, operational control of the assets to ensure public safety grade reliability -including security and maintenance. Viewing the Act as requiring the State to approve requests for collocation is not consistent with the State's obligations as owners of public safety equipment.

The State has an interest in protecting the current users of public safety communications networks. The State of Maryland is implementing a spectrally efficient statewide P25 Phase II public safety 700 MHz land mobile radio ("LMR") communications system that is currently (and will be) used by federal, State, and local government first responders. This system is known as the Maryland First Responders Interoperable Radio System Team ("Maryland FiRST"). This network operates in frequency bands that neighbor those allocated to the National Public Safety Broadband Network ("NPSBN"). This makes the risk of frequency intermodulation high - and the need for careful antenna placement critical to the continued success of both Maryland FiRST and the NPSBN. The State, in its capacity as owner of public safety communications towers, has an obligation to ensure that collocated NPSBN equipment does not interfere with existing State assets.

The State also has a role in planning for the future uses of its assets. Tower capacity is an important part of Maryland's long-term and ongoing strategic planning. Current and future asset needs may not be accurately represented by the equipment found on a tower at any given time. As such, FirstNet should not view current vacant tower space as available. The State's interest in providing public safety is not adverse to the priorities of FirstNet, they are actually in harmony. However, a broad default rule that does not let the State, as asset owner, cooperatively work with FirstNet to develop current and future asset use plans, will effectively subvert the efforts of both. In light of the above discussion, Maryland believes that in its role as a property owner, it should have the ability to deny or withhold approval to proposed modifications. Though

Maryland looks forward to developing a strong working collaboration with FirstNet, adoption of the IAC's recommendation, as proposed by the Commission, would adequately recognize the obligations the State has to its citizens and first responders in its capacity as asset owner.

¶188 The Commission seeks comment on whether section 6409(a) places restrictions, limitations, or requirements on the filing and review process applicable to applications subject to section 6409(a), and if so, what Federal standards would appropriately implement such limitations.

Comment to ¶188: Maryland supports the FCC's proposal to find that that section 6409(a) "permits a State or local government at a minimum to require an application to be filed and to determine whether the application constitutes a covered request." More specifically, Maryland supports the proposition that specific fact finding activities should be permitted so as to provide State and local regulators the necessary opportunity to determine Section 6409(a)'s applicability to particular requests. Furthermore, state and local governments should be provided the freedom to adopt procedures that will enable them to make such determinations. Maryland believes that expediting the process is incompatible with ensuring that state and local authorities have ample opportunity to understand the full impact of proposed collocation, removal, or modifications prior to approving or denying such proposals.

Maryland understands and supports the FCC's mission of determining an appropriate 6409(a) review process. It is Maryland's strong belief that the mechanics of that process must put local public safety interests first.

¶189 The Commission further seeks comment on whether, given the directive that the State or local government shall approve, section 6409(a) permits and warrants Federal limits on

applicable fees, processes, or time for review. If so, should the Commission define what these limits are, or are the variations in circumstances such that it is better to address them case-by-case? If the Commission does define them, what should the limits be?

Comment to ¶89: See Comment to 88. Maryland supports permitting detailed fact finding activities to ensure proper appropriate decision-making. The State hopes that the FCC final rule is consistent with that goal.

¶195 The Commission seeks comment on what remedies should be available to enforce section 6409(a) in cases of failure to act or decisions adverse to the applicant.

Comment to ¶195: Maryland strongly believes that the failure of the State or local governments therein to act should *not* imply approval under 6409(a). The State has a strong interest in ensuring that any new communications equipment meets a high standard for public safety, and also protects already existing investments in towers and base stations. As FirstNet begins to implement the new NPSBN, Maryland anticipates that there could be a higher than normal volume of requests for approval. As such, administrative delays should be expected. The State and its localities should not be punished as a result of these administrative delays. More importantly, forging ahead with collocations, removals, or modifications that have not been fully vetted could disrupt public safety communications, and put first responders in danger.

In the case of decisions adverse to the applicant, Maryland believes that, generally, a court will be in a better position to fashion a remedy than FCC rule making. Courts will be in better position to consider the needs of both FirstNet and existing State and local assets.

¶103 Should the Commission apply the test for substantial increase in size under section 332(c)(7) in the same manner as it interprets the test under section 6409(a) for substantial change in physical dimensions?

Comment to ¶103: Maryland believes that there are substantial differences between the parties contemplated in 332(c)(7) ("332") and 6409(a) ("6409"). As a result, the State believes that the test for "substantial change in physical dimensions" in 6409 should be distinct from the test for "substantial increase in size" under 332.

Criteria for "substantial increase in size" under 332 are:

- Increase in tower height by more than 10% or height of additional antenna array plus 20 feet, whichever is greater
- More than 4 new equipment cabinets or 1 new shelter
- Protrusion of more than 20 feet or width of tower, whichever is greater
- Excavation outside existing leased or owned property and current easements²

Maryland believes these criteria, while reasonable for meeting section 332's goal of increasing common carrier wireless coverage, are inconsistent with the public safety centric goals of 6409.

This can be seen clearly when considering collocation of NPSBN equipment on Maryland owned public safety towers. Practically speaking, typical collocations towers that fall under the purview of 332 are collocations on monopole towers of 180 feet or less. In Maryland, towers used for the existing public safety communications systems are built to the Maryland standard - self-supporting at 330 feet. Considering a 9.99%

² Steinberg, Jeffery, FCCIAC Webinar, available at: <http://r.duckduckgo.com/l/?kh=-1&uddg=http%3A%2F%2Ftransition.fcc.gov%2Fstatelocal%2Fpresentations%2FCollocation.ppt>, see Slide 6; last visited 1/28/2014.

height increase (32 feet), or a 19 additional feet protrusion to be an insubstantial change in physical dimensions abuses common sense. Furthermore, the majority of Maryland's self-supporting towers are not structurally capable of such modification. Moreover, such changes could have a serious impact on Maryland's public safety networks. Such proposed changes should be viewed as substantial physical dimension changes under 6409, and the State should have the opportunity to deny such proposals. Maryland therefore, suggests that a new standard be developed for measuring substantial physical dimension change under 6409, and that this new standard take into consideration the public safety purpose of 6409, as well as the practical reality of those state and local-owned towers that are likely to be subject to 6409 collocation requests, and establish a standard that rightly considers even relatively-changes substantial.

¶104 The Commission seeks comment on whether to clarify when a siting application is considered complete for the purpose of triggering the 2009 Declaratory Ruling time frame and, if so, how that should be determined.

Comment to ¶104: see comments on ¶103.

For the foregoing reasons, the State of Maryland respectfully requests that the Commission adopt the recommendations contained herein.

Respectfully Submitted,



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